



22 June 2018

By email

**NHS Partners Network's Response to the CMA consultation on the Review of Private Patient Unit (PPU) arrangements**

1. NHS Partners Network (NHSPN) is the representative body for independent sector healthcare providers. Our members deliver a diverse range of services to NHS and private patients including acute care, primary care, community care, clinical home healthcare, diagnostics and dentistry.
2. We note that the CMA is consulting on a draft guidance on its approach to the review of PPU arrangements under the order and specifically on arrangements for a private hospital operator to operate, manage, or otherwise provide, privately-funded healthcare services at a private patient unit in England, Wales, Northern Ireland or Scotland.
3. We note that the guidance has been developed based on the CMA's experience of reviewing three PPU arrangements in this context and welcome the increased clarity the guidance will bring to the process.
4. However, members have some concerns that the **timing of the process** has the potential to create difficulties for independent providers dealing with the NHS in a bid situation. This is because there appears to be no statutory deadline for completing the CMA review.
5. It would be helpful for the guidance to include the expected timeframe for the CMA to decide whether to review the arrangement. In this respect, the merger review timelines set out in the Enterprise Act 2002 provide a useful framework as a back stop to avoid overly long processes (40 working days for Phase 1).
6. Members also commented that the pre-notification process should be able to be undertaken when a party is on the shortlist of preferred bidders, rather than having to wait until they are the selected bidder.
7. Finally on the timing point, it would be useful for the CMA guidance to include the expected timeframe to complete a PPU review. Again, the merger review timelines set out in the Enterprise Act 2002 are a useful back stop to avoid overly long processes (24 weeks for Phase 2).
8. There was also some concern about the CMA employing **formal information requests** as a standard when gathering information from the parties. Whilst this is in line with the CMA's latest guidance on requests for internal documents in merger control processes, it would appear disproportionate given that the number of merger cases where the CMA faces difficulties in document gathering is very low. The CMA has the power to issue a formal request at any time and rather than this be a standard approach, it would seem more reasonable to only be the standard where: the CMA has doubts a recipient will comply with an informal request, it has concerns over the timeliness of the response, or where it believes that evidence may be destroyed.
9. For more information about this response, please contact [disa.young@nhsconfed.org](mailto:disa.young@nhsconfed.org)

